

12/05/08

To: Claire Hong  
Regional Project Manager, EPA

From: M. C. Halvorsen

Subj: Letter to Thomas Tanaka  
Senior Counsel  
Port of Seattle

Date: Dec. 5, 2008

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December 4, 2008

Thomas H. Tanaka  
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Dear Mr. Tanaka:

Thank you for your letter of November 11, 2008 replying to my letter to Joseph Gellings of November 6. I have been out of town and only just returned December 1, 2008. You state: "The holdings in the federal and state cases you cite do not actually stand for the proposition you state regarding the riparian rights of upland owners on navigable waters." I am hereby giving you direct quotes from the cases.

In "United States v. Chandler-Dunbar Water Power Co." 33 S. Ct. 667, at p. 672 the Court states:

The primary use of the waters and the lands under them (the riverbed)  
is for purposes of navigation.

At p. 674-5

That riparian owners upon public navigable rivers have in addition to the rights common to the public, certain rights to the use and enjoyment of the stream, which are incident to such ownership of the bank, must be conceded. These additional rights are not dependent upon title to the soil over which the river flows, (riverbed) but are incident to ownership upon the bank...

They have also the right of access to deep water, and...may construct for this purpose, wharves, docks, and piers in the shallow water of the shore.

In "United States v. River Rouge Improvement Co." 46 U.S. 144, at p. 147 the Court said:

Congress is the only one to make laws regarding navigation.

...it (Congress) may not arbitrarily destroy or impair the rights of riparian owners by legislation which has no real or substantial relation to the control of navigation or appropriateness to the end.

In *Yates v. Milwaukee* (10 Wall 497, 19 L.Ed. 974) it was said in reference to the right of a riparian owner on a navigable stream:

'This riparian right is property, and is valuable, and...it cannot be arbitrarily or capriciously destroyed or impaired.'

...a riparian owner upon a navigable stream has a property right, incident to his ownership of the bank, of access from the front of his land to the navigable part of the stream, and...may construct landings, wharves or piers for this purpose. (Citations omitted because they are so numerous.)

"Commercial Waterway District No. 1 of King County v. The State of Washington" (1957) 50 Wn.2d 335, 311 P.2d 680 confirmed title in the Commercial Waterway District of the riverbed.

"Austin v. Bellingham" 69 Wash. 677 (1912) at p. 680 states:

Faith is put in the grant of a right to occupy and use the beds and shores of navigable lakes and streams up "to high water mark."

At p. 681

Its rights are limited to the line of ordinary high water.

I have already quoted just a few of the Washington State cases in my letter to Mr. Gellings and will not repeat the quotes again. If you would like further information on riparian rights in the State of Washington see "In re Stranger Creek and Tributaries in Stevens County" (1970) 77 Wash 2d 649, 446 P.2d 508. There is a very good discussion of riparian rights' history.

These cases are written in plain and understandable English. Since I assume that your native language is English, I know a lack of understanding the language is not the problem. It is true that the Port of Seattle thinks if it says something is so, then that makes it so. Possibly, you are in denial. Whatever the reason, I cannot fathom why you would ever say that these cases do not give the owners of the uplands in the Duwamish River riparian rights including the right to build wharves, piers and warehouses in the shallow waters of the waterway.

Should we ever have to go to Court, I am certain the Judge would be able to read the cases as written.

You cannot interfere with the riparian rights of the upland owners. I do believe your plans would interfere with Hurien Construction's riparian rights. Your plan has no scientific basis on which to show that it would succeed and many questions pointing to its failure. You have no regard for safety. After the incident at Mumbai wherein the terrorists simply entered the city by sailing up the river in inflatable rafts and walked ashore, I would think you would hesitate to make it easy for terrorists to do the same thing in the Duwamish, but you are unconcerned.

As to any future actions the Port might take, I cannot comment as I do not know what they are.

Very truly yours,

M. C. Halvorsen

cc: Mr. Joseph Gellings  
Senator Patty Murray  
Senator Maria Cantwell  
Representative Jay Inslee  
Miss Claire Hong, EPA  
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